

APPEAL NO. 041810
FILED SEPTEMBER 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 24, 2004. The hearing officer determined that: (1) respondent (claimant herein) did not sustain an injury in the course and scope of employment; (2) the date of the claimed injury was _____; (3) appellant self-insured (carrier herein) waived the right to contest compensability of the claimed injury; (4) claimant failed to timely notify his employer of the claimed injury, but that carrier is not relieved from liability due to carrier waiver; and (5) the injury is compensable as a matter of law and claimant had disability beginning on December 19, 2003, and continuing through the date of the hearing. Carrier appealed the hearing officer's determinations related to carrier waiver and disability. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier asserts that the hearing officer erred in determining that it waived the right to contest the compensability of the claimed injury. Carrier's contention in this regard is that the Appeals Panel has misapplied Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.) in prior cases involving carrier waiver. In the case now before us, the hearing officer determined that claimant suffers from a chronic degenerative condition of the lumbar and cervical spine. Carrier asserts that because claimant did not injure his back in the "course and scope of employment," then there can be no carrier waiver. We addressed a similar assertion in Texas Workers' Compensation Commission Appeal No. 031020, decided June 12, 2003, and said:

The carrier argues that these provisions do not apply in the present case because of the holding in [Williamson, *supra*]. In Williamson, the Tyler Court of Appeals held that if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law. We agree with that proposition; however, we find it is not applicable in this case. We have previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury as defined in Section 401.011(26), as opposed to cases such as this, where there is an injury which was determined by the hearing officer not to be causally related to the employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002; Texas Workers' Compensation Commission Appeal No. 022450, decided November 12, 2002. To

interpret Williamson in the way carrier 1 argues would in essence mean that waiver would only apply to cases in which the claimant would have won absent waiver, which would in effect render Section 409.021 and the [Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002)] decision meaningless. In a long and unbroken line of cases, the Appeals Panel has rejected such an interpretation. We continue to do so.

Carrier contends that because there was no carrier waiver, it should be relieved of liability since claimant did not timely report the claimed injury to his employer. However, since we are affirming the determination regarding carrier waiver, we reject carrier's contention. See Texas Workers' Compensation Commission Appeal No. 022027-s, decided September 30, 2002. Carrier contends that claimant did not have disability because there was no compensable injury. Because we have affirmed the determination that claimant's injury is compensable as a matter of law, we also affirm the disability determination.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **a governmental entity self-insured either individually or collectively through the Texas Association of School Boards Risk Management Fund** and the name and address of its registered agent for service of process is

TG
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge